

November 4, 2020

VIA EMAIL AND IBFS

Denise Coca, Chief
Telecommunications and Analysis Division
International Bureau
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: In the Matter of China Unicom (Americas) Operations Limited
GN Docket No. 20-110; File Nos. ITC-214-20020728-00361; ITC-214-20020724-00427
DA 20-1215

Dear Ms. Coca:

At the direction and on behalf of China Unicom (Americas) Operations Limited (“CUA”), the undersigned counsel hereby responds to the Commission’s October 15, 2020 letter (“Request”) to Sanchitha Jayaram, Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, on behalf of the Attorney General as Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (“Committee”). The Request asked that the Committee address certain arguments made by CUA in its June 1, 2020 response to the April 24, 2020, Order to Show Cause issued by the Commission’s International, Wireline Competition, and Enforcement Bureaus (the “Bureaus”).¹ Specifically, the Request sought “the Committee’s views on China Unicom Americas’ arguments concerning whether and how it is subject to the exploitation, influence, and control of the Chinese government, and the national security and law enforcement risks associated with such exploitation, influence, and control.” The Request also asked the Committee to respond as to whether mitigation measures could address any identified concerns and to provide a response and any supporting documentation within 30 days or by November 16, 2020.

¹ China Unicom (Americas) Operations Limited, GN Docket No. 20-110; File Nos. ITC-214-20020728-00361; ITC-214-20020724-00427, Order to Show Cause, 35 FCC Rcd 3721 (IB, WCB, EB 2020) (“Order to Show Cause”); China Unicom (Americas) Operations Limited, Response to Order to Show Cause, GN Docket No. 20-110; File Nos. ITC-214-20020728-00361; ITC-214-20020724-00427 (filed June 1, 2020) (“Response to Order to Show Cause”).

In its Response to the Order to Show Cause, CUA respectfully submitted that the Bureaus provided no valid grounds for initiating a proceeding to revoke CUA's long-standing section 214 authorizations to provide domestic and international telecommunications services in the United States.² Instead, the Order to Show Cause only contained generalized suggestions and unsubstantiated allegations.³ As CUA noted, these allegations stand in stark contrast to CUA's nearly twenty-year history of providing secure and reliable communications services to U.S. customers.⁴

Notwithstanding the unsupported nature of the concerns raised in the Order to Show Cause, CUA expressly committed to work in good faith to resolve these concerns. CUA specifically noted in its Response to the Order to Show Cause that it "would be willing to engage in discussions with the Commission and the other U.S. government agencies regarding the terms or arrangements that would be acceptable to resolve any national security concerns."⁵ CUA remains willing to engage in such discussions. However, it is concerned that the process provided in the Request fails to provide the Committee with sufficient time or information to perform a substantive review. Moreover, the process does not contemplate any engagement between the Committee and CUA to address these matters. As a result, CUA respectfully submits that the Request does not provide an opportunity for a meaningful Committee review and assessment of the issues raised by the Order to Show Cause.

The lack of engagement by the U.S. government in response to CUA's offer to discuss mitigation options is especially notable in light of the June 2020 report issued by the U.S. Senate Permanent Subcommittee on Investigations that reviewed the operations of international communications service providers with Chinese government ownership.⁶ The PSI Report noted that when CUA applied for its section 214 authorization in July 2002, the FCC asked Team Telecom⁷ to review the application for any national security or law enforcement risks.⁸ However, neither the FCC nor Team Telecom had any record of Team Telecom raising any concerns about the CUA application.⁹ On September 13, 2002, the FCC issued a public notice formally accepting CUA's application for filing. Because Team Telecom had raised no concerns, the FCC granted the application two weeks later.¹⁰ Team Telecom did not request, and CUA did not enter into, any security or mitigation agreement in connection with its application.

The PSI Report also noted that in the absence of such a security agreement between Team Telecom and CUA, Team Telecom is not "directly in privity" with the company and has no insight into its operations.¹¹ The PSI Report cites Team Telecom officials as acknowledging that without a security agreement, Team Telecom has no ability to oversee or monitor the operations of CUA.¹² CUA can confirm that it has not engaged with Team Telecom in the nearly 20 years since obtaining its section 214

² The Order to Show Cause also required CUA to explain why the Commission should not reclaim CUA's International Signaling Point Codes.

³ Response to Order to Show Cause at 1-2.

⁴ *Id.*

⁵ Response to Order to Show Cause at 9.

⁶ United States Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Threats to U.S. Networks: Oversight of Chinese Government-Owned Carriers, Staff Report issued June 9, 2020 ("PSI Report"). CUA cooperated with the investigation and briefed Senate staff on its historical and current operations in the U.S.

⁷ The Committee was formerly known as Team Telecom.

⁸ PSI Report at 74-75.

⁹ *Id.* at 75.

¹⁰ *Id.*

¹¹ *Id.* at 76. (underlining added).

¹² *Id.*

authorization. Despite this admitted lack of knowledge of CUA's operations or even an attempt by Team Telecom to engage with CUA, the Request asks the Committee to provide, within 30 days, its views on whether and how CUA is subject to the exploitation, influence, and control of the Chinese government. The Request also seeks an overview of the national security and law enforcement risks associated with such exploitation, influence, and control, and whether mitigation measures could address any identified concerns.

The rushed timeline established by the Request is especially worrisome because the PSI Report recommended that the FCC "establish a clear standard and process for revoking a foreign carrier's existing authorizations. The FCC also noted that telecommunications companies must understand the circumstances under which authorizations could be revoked and be afforded due process to challenge potential revocation." But nothing in the Request provides a clear standard for revoking a carrier's existing authorization and CUA respectfully submits that the Request's 30-day process to solicit the Committee's input is an unreasonably short timeline. The rushed timeline also prevents the Committee and CUA from engaging in any substantive discussions regarding the measures that may help to resolve the U.S. government's concerns. The Committee simply cannot come to a reasonable recommendation regarding the viability of mitigation measures when it has never engaged with CUA on this issue.

Furthermore, the Request process is not consistent with either prior executive branch review practices or the new procedures just established by the Commission.¹³ The Executive Branch Order is awaiting publication in the Federal Register and the rules and procedures adopted are not yet effective. There is, however, no reasonable justification for not applying the rationales for those rules and procedures, adopted just 15 days prior to the Request, to CUA's case.¹⁴ For example, under the new rules:

- The Committee has 120 days for initial review, plus an additional 90 days for secondary assessment if it determines that the risk to national security or law enforcement interests cannot be mitigated with standard mitigation measures. In the Order to Show Cause, the Bureaus raised national security concerns. As such, CUA respectfully submits that limiting the Committee's review and response period to a mere 30 days is unreasonably short for the Committee to perform any meaningful review.
- Parties are required to furnish the Executive Branch agencies with responses to a set of standardized national security and law enforcement questions "designed to provide the agencies with information they need" to facilitate their review. CUA has not been provided the opportunity or time to prepare and submit those responses. As such, the process required in the Request does not provide the Committee with the information that the

¹³ See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket No. 16-155, Report and Order, FCC 20-133 (Oct. 1, 2020) ("Executive Branch Order").

¹⁴ The Executive Branch Order provides that "[w]e find that new rules or a separate proceeding are unnecessary to address Committee reviews of existing licenses." Executive Branch Order at ¶92. Furthermore, "licenses" is defined as those licenses where the Commission had referred the application to the Executive Branch agencies, including the Committee, both prior to and after Executive Order 13913. In the case of CUA, the FCC appears to have made a referral to then Team Telecom. However, as noted in the PSI Report, neither the FCC nor Team Telecom had any record of Team Telecom raising any concerns about the application. In fact, there is no evidence that Team Telecom even reviewed CUA's application. Absent a substantive review and decision on CUA's application, the administrative task of merely referring an application to Team Telecom cannot be seen as a justification to now cut to 30 days the Committee's review of a stale record, whatever it might be.

November 4, 2020

Commission has determined is needed to review national security and law enforcement concerns.

CUA firmly believes that a thorough and fair Committee review could result in a mitigation agreement to address any national security or law enforcement concerns. It would be very unreasonable for the Committee to conclude that its concerns cannot be mitigated without conducting such a review or ever having met with CUA to discuss potential mitigation options. However, to the extent the Committee concludes otherwise, CUA notes that the Commission committed that “[c]onsistent with current practice, the Commission will provide any affected authorization holder or licensee an opportunity to respond to the Committee's recommendation prior to any action by the Commission. This will address the commenters’ concern that the Commission might proceed with modification or revocation of an existing authorization or license without warning or the opportunity to comment” because “the Commission already has procedural safeguards in place to protect licensees’ due process rights...”¹⁵

As noted in CUA’s Response to Show Cause Order, the Commission has previously afforded targets of potential section 214 revocations the opportunity to respond to allegations in an evidentiary hearing before an Administrative Law Judge.¹⁶ CUA has operated in accordance with U.S. laws and regulations for almost two decades and has recently taken actions to strengthen its corporate governance and compliance to clearly demonstrate that it is not subject to the exploitation, influence, or control of the Chinese government.¹⁷ Therefore, CUA respectfully renews its objection to any action by the Commission to revoke CUA’s section 214 authorizations without providing CUA a hearing with all of the substantive and procedural rights afforded under the Commission’s rules. If you have any questions or require additional information please contact me.

Sincerely,



Robert E. Stup, Jr.

¹⁵ Executive Branch Order at ¶92. The Commission expressly acknowledged that such an “opportunity to respond is required by due process and applicable law...” *Id.*

¹⁶ *See* Response to Order To Show Cause at 12.

¹⁷ In addition, CUA’s immediate corporate parent is a Hong Kong corporation that operates in accordance with the laws and regulations of Hong Kong. In turn, its parent’s corporate parent is subject to the extensive transparency, governance, and affiliated interest restrictions of each of the exchanges on which it is listed.

November 4, 2020

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November 4, 2020

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